

REMARKS

Claim Rejections

Claims 1, 3, 4 and 8-13 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Waggamon (6,049,289) in view of Ananda (6,671,813). Claims 2, 5, 7, and 15 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Waggamon in view of Ananda as applied to claims 1 and 13 above, and further in view of Kawaguchi (2002/0099967).

It is noted that the reference to Ananda was initially cited by the Examiner in the outstanding Final Office Action. Thus, this Amendment represents Applicant's initial opportunity to respond to the rejections based upon this reference.

Claim Amendments

By this Amendment, Applicant has cancelled claim 6 and has amended claims 1, 13, and 15 of this application to include the limitations of claim 6. Claim 7 has been amended to remove duplicative limitations, while claims 8 and 11 have also been amended to correct various typographical errors. It is believed that the amended claims specifically set forth each element of Applicant's invention in full compliance with 35 U.S.C. § 112, and define subject matter that is patentably distinguishable over the cited prior art.

As a preliminary matter, Applicant notes that no prior art has been cited against claim 6. Since the limitations of claim 6 are now incorporated into all pending claims by amendment, without regard to the arguments that follow, Applicant has traversed the Examiner's rejections under § 103(a).

The amended claims are directed toward: a high-security encoding device for a remote controller and method of use, ***wherein said mode select value (or mode value) is 2 bytes in length, by which a mode is chosen among the normal mode, emergency mode, and synchronized mode according to actual need.***

In comparison, Waggamon teaches a remote control garage door system including a transmitter 44 which the Examiner has cited as teaching Applicant's encoding device having a timer for determining transmitting time. However, Applicant has reviewed the cited disclosure of col. 4, ll. 43-54 (as well as, col. 5, ll.

31-34, and col. 7, ll. 38-42) and determined that Waggamon employs a counter, not a timer. As a result, Applicant submits that this prior art device cannot effectively prevent a mask-replay attack. Furthermore, the reference fails to teach anything about calculating and applying a time-between-operations. As admitted by the Examiner on p. 3 of the outstanding Office Action, Waggamon does not teach a timer used to provide a transmitting time and a time-between-operations.

Ananda is cited as providing this deficiency. Applicant does not necessarily acquiesce to this characterization and notes that, in any event, the reference fails to teach the above noted deficiency of Waggamon. Furthermore, the Examiner has admitted on p. 4 of the outstanding Office Action that Waggamon and Ananda fail to teach a 2 byte identity value.

Kawaguchi is cited as teaching a 2 byte Specifier and node ID (as well as a 32 bit timer; activating an encoding device and a timer and encrypting the transmitting time and identity and the mode value; checking a state on a decoder and suspending the timer if the state is idle and sending a transmission if the state is active). Specifically, the Examiner has argued that [0070] and [0090] teach Applicant's recited 2 byte identity value of claim 7. However, as previously noted the Examiner has not argued that the reference teaches anything about ***both the mode select value (or mode value) being 2 bytes in length and the mode being chosen from normal mode, emergency mode, and synchronized mode according to actual need.*** In fact, Applicant believes that [0070] and [0090] fail to teach anything about the latter recited limitations of claim 6.

Accordingly, even if the teachings of Waggamon, Ananda, and Kawaguchi were combined, as suggested by the Examiner, the resultant combination does not suggest: a high-security encoding device for a remote controller and method of use, wherein said mode select value (or mode value) is 2 bytes in length, by which a mode is chosen among the normal mode, emergency mode, and synchronized mode according to actual need.

It is a basic principle of U.S. patent law that it is improper to arbitrarily pick and choose prior art patents and combine selected portions of the selected patents on the basis of Applicant's disclosure to create a hypothetical combination which allegedly renders a claim obvious, unless there is some direction in the selected

prior art patents to combine the selected teachings in a manner so as to negate the patentability of the claimed subject matter. This principle was enunciated over 40 years ago by the Court of Customs and Patent Appeals in In re Rothermel and Waddell, 125 USPQ 328 (CCPA 1960) wherein the court stated, at page 331:

The examiner and the board in rejecting the appealed claims did so by what appears to us to be a piecemeal reconstruction of the prior art patents in the light of appellants' disclosure. ... It is easy now to attribute to this prior art the knowledge which was first made available by appellants and then to assume that it would have been obvious to one having the ordinary skill in the art to make these suggested reconstructions. While such a reconstruction of the art may be an alluring way to rationalize a rejection of the claims, it is not the type of rejection which the statute authorizes.

The same conclusion was later reached by the Court of Appeals for the Federal Circuit in Orthopedic Equipment Company Inc. v. United States, 217 USPQ 193 (Fed.Cir. 1983). In that decision, the court stated, at page 199:

As has been previously explained, the available art shows each of the elements of the claims in suit. Armed with this information, would it then be non-obvious to this person of ordinary skill in the art to coordinate these elements in the same manner as the claims in suit? The difficulty which attaches to all honest attempts to answer this question can be attributed to the strong temptation to rely on hindsight while undertaking this evaluation. It is wrong to use the patent in suit as a guide through the maze of prior art references, combining the right references in the right way so as to achieve the result of the claims in suit. Monday morning quarterbacking is quite improper when resolving the question of non-obviousness in a court of law.

In In re Geiger, 2 USPQ2d, 1276 (Fed.Cir. 1987) the court stated, at page 1278:

We agree with appellant that the PTO has failed to establish a *prima facie* case of obviousness. Obviousness cannot be established by combining the teachings of the prior art to produce the claimed invention, absent some teaching suggestion or incentive supporting the combination.

Applicant submits that there is not the slightest suggestion in either Waggamon, Ananda, or Kawaguchi that their respective teachings may be combined as suggested by the Examiner. Case law is clear that, absent any such teaching or suggestion in the prior art, such a combination cannot be made under 35 U.S.C. § 103.

Neither Waggamon, Ananda, nor Kawaguchi disclose, or suggest a modification of their specifically disclosed structures that would lead one having ordinary skill in the art to arrive at Applicant's claimed structure. Applicant hereby respectfully submits that no combination of the cited prior art renders obvious Applicant's amended claims.

### **Summary**

In view of the foregoing amendments and remarks, Applicant submits that this application is now in condition for allowance and such action is respectfully requested.

It is not believed that the foregoing amendments to claims 1, 13, and 15 require any further searching and/or consideration on the part of the Examiner, since such amendments merely include incorporating the language of canceled claim 6 into claims 1, 13, and 15. Thus, the Examiner would have inherently searched this subject matter during the previous consideration of claim 6.

Should any points remain in issue, which the Examiner feels could best be resolved by either a personal or a telephone interview, it is urged that Applicant's local attorney be contacted at the exchange listed below.

Respectfully submitted,

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